

SENATE BILL 2682

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 11, to create the "Tennessee Death
Penalty Representation Services Act of 2008".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 11, is amended by adding
the following new part 8:

Section 39-11-801. This part shall be known and may be cited as the
"Tennessee Death Penalty Representation Services Act of 2008".

Section 39-11-802. The purpose of this part is to ensure effective representation
for persons charged with a death eligible offense or who have been sentenced to death,
including all individuals who have been determined to be indigent at any procedural
stage. In order to accomplish this purpose, it is the intent of the general assembly that
this part:

- (1) Enhance oversight of the delivery of counsel and related services
provided at state expense in death penalty eligible and death sentence cases;
- (2) Improve the quality of representation and ensure the independence of
counsel in death penalty eligible and death sentence cases;
- (3) Establish uniform policies and procedures for the delivery of services
in death penalty eligible and death sentence cases;
- (4) Generate reliable statistical information in order to evaluate the
services provided and funds expended in death penalty eligible and death
sentence cases; and

(5) Deliver services in the most efficient and cost effective manner without sacrificing quality representation in death penalty eligible and death sentence cases.

Section 39-11-803. As used in this part, unless the context otherwise requires:

(1). "Appointed counsel" means an attorney other than a public defender appointed to represent an indigent party under this rule;

(2). "Commission" refers to the commission on Tennessee death penalty representation services;

(3). "Death penalty eligible" includes a person accused of a murder for which the death penalty could be sought;

(4). "Death penalty case" is one where a person is either potentially death eligible or has been sentenced to death;

(5). "Director" refers to the director of Tennessee death penalty representation services;

(6). "Office" refers to the office of Tennessee death penalty representation services; and

(7). "Public Defender" means a district public defender, the state post conviction defender or the public defender selected in Metropolitan Nashville and Davidson County or Shelby County.

Section 39-11-804.

(a) The commission on Tennessee death penalty representation services is created and shall consist of nine (9) members. To create an effective working group, assure continuity, and achieve staggered terms, the commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

(1) The chief justice of the Tennessee supreme court shall appoint one (1) member;

(2) The speaker of the house of representatives shall appoint one (1) member;

(3) The speaker of the senate shall appoint one (1) member;

(4) The Tennessee district public defenders conference shall appoint three (3) members;

(5) The Tennessee bar association shall appoint one (1) member;

(6) The Tennessee association of criminal defense lawyers shall appoint two (2) members.

(c)

(1) The terms of members appointed under subsection (b) shall be as follows:

(A) The initial appointment of the chief justice, speaker of the house of representatives and the speaker of the senate shall be for three (3) years;

(B) The initial appointments of the Tennessee district public defender's conference shall be for (2) two years; and

(C) The initial appointments of the Tennessee association of criminal defense lawyers and the Tennessee bar association shall be for one (1) year.

(2) At the expiration of these initial terms, appointments shall be for three (3) years and shall be made by the appointing authorities designated in subsection (b). No person shall serve more than two (2) consecutive three-year terms plus any initial term of less than three (3) years.

(d) Persons appointed to the commission shall have significant experience in the provision of representation in cases subject to this part or shall have demonstrated a strong commitment to quality representation in death penalty defense matters. No active prosecutors or law enforcement officials, or active employees of such persons, may be appointed to, or serve on the commission. No active judicial officials, employees of the district attorney general's conference, attorney general and reporter or administrative office of the courts, or active employees of such offices, may be appointed to or serve on the commission, except as provided in subdivision (b)(1). No employees of the office of the executive director of the Tennessee district public defenders conference, post conviction defenders office, or other active employees of the office of death penalty representation services may be appointed to or serve on the commission. In making appointments, the appointing authority shall do so with the conscious intention of selecting a body which reflects a diverse mixture with regard to geography, race, and gender.

(e) All members of the commission are entitled to vote on any matters coming before the commission unless otherwise provided by rules adopted by the commission concerning voting on matters in which a member has, or appears to have, a financial or other personal interest.

(f) Each member of the commission shall serve until a successor in office has been appointed. Vacancies shall be filled by appointment of the appointing authority for the unexpired term. Removal of commission members shall be in accordance with policies and procedures adopted by the commission.

(g) A quorum for purposes of conducting commission business shall be a majority of the members of the commission.

(h) The commission shall elect a commission chair from the members of the commission for a term of two (2) years.

(i) The director of office of Tennessee death penalty representation services shall attend all commission meetings except those relating to removal or reappointment of the director or allegations of misconduct by the director. The director shall not vote on any matter decided by the commission.

(j) Commission members shall not receive compensation but are entitled to reimbursement in accordance with the comprehensive travel regulations.

Section 39-11-805.

(a) The commission shall have as its principal purpose the development and improvement of programs by which the office of Tennessee death penalty representation services provides legal representation and related services to indigent persons.

(b) The commission shall appoint the director of the office of the Tennessee death penalty representation services who shall be chosen on the basis of training, experience, and other qualifications. The commission shall consult with the chief justice and director of the administrative office of the courts in selecting a director, but shall have final authority in making the appointment.

(c)

(1) The commission shall develop standards governing the provision of services under this part. The standards shall include:

- (A) Prescribing minimum experience, training, and other qualifications for appointed counsel;
- (B) Appointed counsel caseloads/workloads;
- (C) Performance of appointed counsel;

(D) Establishing compensation rates for assigned private counsel, forensic experts, and others who provide services related to legal representation; and

(E) Determining indigence and assessing and collecting the costs of legal representation and related services.

(2) In setting these standards and fee rates the commission shall be guided by, and make every effort to comply with, the ABA Standards for Criminal Justice: Providing Defense Services; ABA Standards for Criminal Justice: Defense Function; and ABA Guidelines for Appointment and Performance of Defense Counsel in Death Penalty Cases.

(d) The commission shall determine the methods for delivering legal representation under this part. The commission shall establish in each judicial district or combination of districts, a system for the appointment of counsel that best utilizes legal services provided by public defenders and assigned private counsel. In determining the method of services to be provided in a particular judicial district, the director shall consult with the district public defender, bar association(s) and judges of the district under consideration. The commission shall adopt procedures ensuring that affected local bar associations have the opportunity to be significantly involved in determining the method or methods for delivering services in their districts. The commission shall solicit written comments from the affected local bar associations and the presiding judge of the judicial district.

(e) The commission shall establish policies and procedures with respect to the distribution of funds appropriated under this part, including schedules of allowable expenses, appointment and compensation of expert witnesses, investigators,

interpreters, and other support services and procedures for applying for and receiving compensation.

(f) From time to time the commission shall evaluate, study and make recommendations about the rates of compensation for appointed counsel, including the impact of rates on the availability of counsel both in terms of quantity and quality.

(g) The commission shall approve and recommend to the general assembly a budget for the office of Tennessee death penalty representation services.

(h) The commission shall adopt such other rules and procedures as it deems necessary for the conduct of business by the commission and the office.

Section 39-11-806.

(a) The office of Tennessee death penalty representation services is hereby created. The office is administered by the director of Tennessee death penalty representation services. The office, director, and commission exists within the judicial department.

(b) The office shall exercise its prescribed powers independently of the director of the administrative office of the courts. The office shall have all powers necessary and proper to fulfill its duties under this part including, but not limited to, entering into contracts, owning property, and accepting funds, grants, and gifts from any public or private source to pay expenses incident to implementing its purposes.

(c) The office will recruit counsel in death penalty cases, provide resource assistance, and provide direct representation in selected cases. These distinct functions will be carried out by three independent divisions operating within the office:

- (1) Trial;
- (2) Appeal from trial; and,
- (3) State post-conviction review.

(d) The director of the administrative office of the courts shall provide general administrative support to the office. The term "general administrative support" includes purchasing, payroll, and similar administrative services.

(e) The budget of the office shall be a part of the judicial department's budget. The commission shall consult with the director of the administrative office of the courts, who shall assist the commission in preparing and presenting to the general assembly the office's budget, but the commission shall have the final authority with respect to preparation of the office's budget and with respect to representation of matters pertaining to the office before the general assembly.

(f) The director of the administrative office of the courts shall not reduce or modify the budget of the office or use funds appropriated to the office without the approval of the commission.

Section 39-11-807.

(a) The office shall be responsible for establishing, supervising, and maintaining a system for providing legal representation by public defenders, assigned private counsel, and the death penalty representation office in any stage of a proceeding in any state court involving a death eligible client or death case.

(b) The office shall develop policies and procedures for determining indigence in cases subject to this part, and those policies shall be applied uniformly throughout the state. The court shall determine in each case whether a person is indigent and entitled to legal representation, and counsel shall be appointed consistent with the procedures outlined in this part.

(c) In all death eligible cases, the office shall appoint legal counsel, in consultation with the district public defender, in the judicial district wherein the case has

been initiated. The office shall determine the rate of compensation to be paid to appointed counsel who is providing legal representation to death eligible defendants.

(d) In all death eligible cases, the attorney or attorneys providing legal counsel to a death eligible defendant, whether public defender or appointed counsel, shall apply to the office for approval for all case-related funding in accordance with rules and procedures adopted by the office for this function. The office shall determine the rate of compensation to be paid to experts, and use of funds for experts, and other services related to legal representation.

(e) The office shall develop a procedure for monitoring the performance of counsel providing representation in capital proceedings. The monitoring component should include, but not be limited to:

(1) Assuring that counsel maintains their eligibility certification to provide representation in capital cases;

(2) Assuring that counsel maintain an appropriate caseloads/workloads while engaged in the representation of a death eligible defendant;

(3) Assuring that counsel's performance in a particular death eligible case is in keeping with the performance standards established by the committee;

(4) Assuring that adequate and meaningful investigation is performed on all complaints of attorney performance in capital cases; and

(5) Assuring that adequate records are maintained with regard to counsel and experts engaged in the representation of death eligible defendants.

(f) The office shall develop and maintain an enforcement division that allows the office to, among other things, withdraw certification from any attorney to continue to

represent death eligible defendants when, in the opinion of the office, the attorney fails to meet the performance standards established by the office.

(g) The office shall conduct, sponsor or approve specialized training programs for attorneys representing defendants in capital cases.

(j) The office shall provide resource assistance for all attorneys providing representation to defendants in capital cases. This assistance shall include the maintenance of brief banks, legal research assistance, case-specific strategic advice, and information concerning investigation and forensic expert assistance.

Section 39-11-808.

(a) The director of Tennessee death penalty representation services shall be appointed by the commission for a term of four (4) years. The director may be removed during this term in the discretion of the commission by a vote of two thirds (2/3) of all of the commission members. The director shall be an attorney licensed and eligible to practice in the courts of this state at the time of appointment and at all times during service as the director.

(b) The director shall:

(1) Prepare and submit to the commission a proposed budget for the office, an annual report containing pertinent data on the operations, costs, and needs of the office, and such other information as the commission may require;

(2) Assist the commission in developing rules and standards for the delivery of services under this part;

(3) Administer and coordinate the operations of the office and supervise compliance with standards adopted by the commission;

(4) Subject to policies and procedures established by the commission, hire such professional, technical, and support personnel as deemed reasonably necessary for the efficient operation of the office;

(5) Keep and maintain proper financial records for use in calculating the costs of the operations of the office;

(6) Apply for and accept on behalf of the office any funds that may become available from government grants, private gifts, donations, or bequests from any source;

(7) Coordinate the services of the office of indigent representation services with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this part and consult with professional bodies concerning improving the administration of indigent services;

(8) Conduct training programs and assist in development and promotion of continuing legal education programs for attorneys and others involved in the legal representation of persons subject to this part; and

(9) Perform other duties as the commission may assign.

Section 39-11-809.

(a) Whenever a party to any death eligible case is seeking court appointed counsel, the party shall be required to complete and submit to the court an affidavit of indigence form provided by the office.

(b) Upon inquiry, the court shall make a finding as to the indigence of the party pursuant to § 40-14-202 and Tennessee supreme court rule 13, which finding shall be evidenced by a court order.

(c) If the court finds the party in a death eligible case indigent, the court shall notify the office and the office shall assume responsibility for the provision of representation consistent with the requirements of this part.

Section 39-11-810.

If the court determines that a death eligible defendant is indigent pursuant to § 39-11-809, appointed counsel may request reimbursement for services related to representation. Such request shall be in a form, and with such specificity as may be prescribed by the office. The request shall be made to the director who shall determine whether the request shall be granted. The commission shall, by rule or regulation, establish the standards for granting requests and rules for appeals from such determinations, which shall include appeal of the director's decision to the full commission.

SECTION 2. For purposes of appointing members of the commission, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on July 1, 2008, the public welfare requiring it.